

Appl. No. 10/675,283
Atty. Docket No. CM2653CL
Amdt. dated 10/28/2005
Reply to Office Action of 07/19/2005
Customer No. 27752

REMARKS

Claim Status

Claims 1 - 18 are pending in the present application. No additional claims fee is believed to be due.

Rejections Under 35 U.S.C. §§ 102/103

Claims 1-18 have been rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Coles, *et al* (U.S. Patent Number 6,613,030 B1). Applicants respectfully traverse these rejections for the following reasons.

1. Rejection under § 102 (b)

According to MPEP § 2143.03, and the case law cited thereunder, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Current independent claim 1 requires, *inter alia*, that the hydrophilic polymer disclosed therein comprise, "...at least 50 mole percent of at least one weak-acid monomer unit having a pKa above 3 (emphasis added)." The Office Action claims that Coles teaches an adhesive wherein, "...the amount of weak acid (acrylic acid) will be at least 50-mol% of the hydrophilic polymer." *See page 4, last full paragraph.* However, Applicants assert that Coles does not set forth this element of claim 1, either expressly or inherently as per § 2143.03. But rather, Coles teaches that acrylic acid is an "additional monomer" and expressly states that, "[a]dditional monomers, when present, are preferably included in an amount up to 10% by weight (emphasis added)." *See column 11, lines 31-42.* On this basis, Applicants submit that Coles fails to meet the requirements set forth under § 2143.03 of the MPEP for an anticipation rejections of claim 1 or of claims 2-13, which depend, or ultimately depend therefrom, and respectfully request their withdrawal.

Applicants further request withdrawal of the anticipation rejections of current independent claim 14, and the balance of the claims which depend, or ultimately depend, therefrom. Current independent claim 14 requires, *inter alia*, that the hydrophilic polymer disclosed therein comprise, "...at least 90 mole percent of weak acid monomer units (emphasis added)." The Office Action claims that Coles teaches an adhesive wherein, "...the large amount of additional monomer – weak acid (acrylic acid) so that its mol% will be at least 90 mol%." *See page 10, first full paragraph.* Applicants assert that Coles does not set forth this element

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of claim 14, either expressly or inherently as per § 2143.03. But rather, Coles teaches that acrylic acid is an "additional monomer" and expressly states that, "[a]dditional monomers, when present, are preferably included in an amount *up to 10% by weight* (emphasis added)." *See column 11, lines 31-42*. On this basis, Applicants submit that Coles fails to meet the requirements set forth under § 2143.03 of the MPEP for anticipation rejections of claims 14-18, and respectfully request their withdrawal.

2. Rejection under § 103(a)

According to MPEP § 2143, a prima facie case of obviousness is established when three basic criteria are met: (1) there must be some motivation or suggestion to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. Applicants submit that Coles does not meet these criteria when applied to the current claims, since as stated above, Coles does not teach or suggest all of the current claim limitations. Assuming *arguendo* that Coles could be construed to do so, Applicants assert that Coles still lacks the motivation or suggestion to modify its teachings to arrive at the present invention. Applicants' assertion is based on the series of suppositions that would be required for a person of skill in the art to arrive at the present invention based upon the disclosure in Coles.

As noted in the Office Action, Coles discloses that in a preferred embodiment of its adhesive, the first and second monomers will be acrylate based. *See page 4, last full paragraph*. The adhesive of Coles is preferably comprised of from 1 to 60 weight % of a first monomer and from 1 to 50 weight % of a second monomer. *See id.* The adhesive composition preferably comprises up to 10 weight % of one or more additional monomers. *See Coles, column 11, lines 31-32*. The additional monomers may be non-ionic, anionic or cationic. *See Coles, column 11, lines 26-30*. A preferred non-ionic monomer is an N-substituted acrylamide. *See Coles, column 11, lines 33-36*. A preferred cationic monomer is a quaternary ammonium salt. *See Coles, column 11, lines 37-40*. A preferred anionic monomer is an acrylate based monomer such as acrylic acid, or a salt, or an ester thereof. *See Coles, column 11, lines 41-42*.

According to the Office Action, Coles teaches that an adhesive may be made in which a weak acid monomer is present as at least 50 mol % of the hydrophilic polymer as per current claim 1. *See page 4, last full paragraph*. Applicants assert that to reach this

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conclusion, a person of skill in the art would have to make the following series of suppositions based upon Coles. *If*: (1) the preferred first monomer is present at the very lowest disclosed weight % of 1%; and (2) the second preferred monomer is present at the very lowest disclosed weight % of 1%; and (3) the optional monomer is present at a weight % *50-fold higher* than that of the preferred first and second monomers, which is in turn *5-fold higher* than the "up to 10 % by weight" that is expressly provided for in Coles; and (4) the additional monomer is not non-ionic, but ionic; and (5) the ionic monomer is anionic and not cationic; and (6) the anionic monomer is an acrylic acid and not an acrylic salt or ester thereof; *then* the amount of weak acid (acrylic acid) disclosed by Coles could be at least 50 mol % of the hydrophilic polymer as is required by the current independent claim 1.

Applicants submit that Coles does not provide any motivation or suggestion, as required under § 2143, to reach this series of conclusions to arrive at the formulation for the hydrogel described in claim 1. For this reason, Applicants respectfully request withdrawal of the § 103(a) rejection of claim 1 and claims 2-13, which depend, or ultimately depend from claim 1.

Applicants further request withdrawal of the § 103(a) rejection of independent claim 14 and claims 15-18, which depend, or ultimately depend, therefrom. Claim 14 requires, *inter alia*, that the "...hydrophilic polymer comprise at least 90 mole % of weak acid monomer units." Applicants assert a person of skill in the art would have to engage in a series of suppositions similar to those discussed above in order to arrive at the invention described in independent claim 14, once again without the motivation or suggestion from Coles that is required under § 2143. Moreover in this instance, the optional monomer of Coles would have to be present at a weight % that is at least *90-fold higher* than that of its preferred first and second monomer, which is in turn *9-fold higher* than the "up to 10% by weight" that is expressly provided for in Coles.

Conclusion

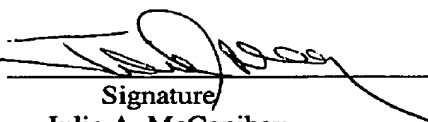
In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. §§ 102(b) and 103(a). Early and favorable action in the case is respectfully requested.

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This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of claims 1-18 is respectfully requested.

Respectfully submitted,

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